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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/441,683	11/16/1999	JOSEPH B. SLATER	KOS-11702/03	4789
25006	7590	07/12/2004	EXAMINER	
GIFFORD, KRASS, GROH, SPRINKLE ANDERSON & CITKOWSKI, PC 280 N OLD WOODARD AVE SUITE 400 BIRMINGHAM, MI 48009			SMITH, ZANDRA V	
		ART UNIT	PAPER NUMBER	
		2877		
DATE MAILED: 07/12/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/441,683	SLATER, JOSEPH B.
Examiner	Art Unit	
Zandra V. Smith	2877	A

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 04 April 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,2 and 4-13 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 1,2 and 4-7 is/are allowed.
- 6) Claim(s) 8 and 10-13 is/are rejected.
- 7) Claim(s) 9 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8, 11, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over ***Lemelson (5,845,646)***.

As to **claim 8**, Lemelson discloses a system and method for treating select tissue in a living being, comprising:

a probe body (fig. 11) having a window (91, fig. 11) oriented toward a sample;
a sampling beam (92, fig. 11) that may carry Raman (col. 1, lines 15-20) wavelengths through the window for analysis ;
a conduit (95, fig. 11) carrying a fluid to the surface of the window; and
a structure (94, fig. 11) operative to flood the window with fluid (col. 14, lines 12-20 and lines 50-60). The embodiment of figure 11 uses visible light or laser energy, however as disclosed in col. 10, lines 55-60 it is well known to use Raman wavelengths. It would have been obvious to one having ordinary skill in the art at the time of invention to use Raman wavelengths because certain body constituents produce distinguishable Raman spectra when illuminated with the proper wavelength and to analyze and detect or diagnose the tissue and to distinguish plaque deposits from healthy tissue at the walls of blood vessels.

As to **claim 11**, Lemelson discloses everything claimed, as applied above, in addition the fluid is a liquid (col. 14, lines 20-23).

As to **claim 13**, Lemelson discloses everything claimed, as applied above, in addition fluid would inherently enter the sample after flooding the window since the scope is inside the body.

Claims 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Lemelson (5,845,646)* in view of *Alfano et al. (5,261,410)*.

As to **claims 10 and 12**, Lemelson discloses everything claimed, as applied above, with the exception of the liquid being a solvent or a gas, however to do so is well known as taught by Alfano. Alfano discloses an endoscope used to determine if a tissue is malignant that includes a liquid, gas, or solvent as the fluid (col. 11, lines 35-40). It would have been obvious to one having ordinary skill in the art at the time of invention use a solvent or gas to dissolve contaminants on the window.

Allowable Subject Matter

Claims 1-2 and 4-7 are allowable over the prior art of record.

Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record, taken alone or in combination, fails to disclose or render obvious part of the fluid passing through an aperture to ensure that the sample does not reach the window.

Response to Arguments

Applicant's arguments filed 06 November 2003 have been fully considered but they are not persuasive. Applicant argues that Lemelson does not provide the use of Raman in a

diagnostic mode, however as disclosed in col. 10, lines 55-60 a Raman diagnostic mode is provided where the light is reflected back to a fiber inside the catheter for wavelength collection.

Applicant's arguments filed 15 April 2004 have been fully considered but they are not persuasive. Applicant argues that the indicated section (col. 8, lines 55-60) of Lemelson does not provide the use of Raman, however the indication of col. 8 was a typographical error and the response to applicant's arguments mailed 06 August 2003 (presented above) clearly pointed out that col. 10, lines 55-60 provided the use of Raman. The examiner apologizes for any inconvenience brought about due to the typo. Since Lemelson clearly provided the use of Raman in a probe, it remains the examiner's opinion that Lemelson meets the limitations as claimed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Fax/Telephone Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zandra V. Smith whose telephone number is (571) 272-2429. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frank G. Font can be reached on (571) 272-2415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Zandra V. Smith
Primary Examiner
Art Unit 2877

July 7, 2004